

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220988.3 **DATE:** February 20, 1986

MATTER OF: Harrell-Patterson Contracting, Inc.--
Request for Reconsideration

DIGEST:

Dismissal of original protest, for failure to timely comment on agency report, is affirmed despite protester's assertion that it received the report late (after the due date of the report). The protester was on notice of obligation to notify GAO that it had not received the report by the due date, but failed to advise GAO timely that it received the report late.

Harrell-Patterson Contracting, Inc. (HPC), requests reconsideration of our decision, Harrell-Patterson Contracting, Inc.--Request for Reconsideration, B-220988.2, Jan. 24, 1986, 86-1 C.P.D. ¶ _____. That decision affirmed our dismissal of HPC's protest, B-220988, under invitation for bids (IFB) No. N62470-85-B-4084, issued by the Department of the Navy. We dismissed HPC's protest on December 23, 1985, because HPC failed to file its written comments on the Navy's report or a statement of continued interest in the protest within 7 working days after receipt of the agency report, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985).

We affirm the dismissal.

In its initial request for reconsideration, HPC's counsel asserted that it did not receive the Navy report until December 13, 1985, and filed its comments on December 24, 1985, within 7 working days of HPC's receipt of the report. However, we stated that our receipt of HPC's comments within 7 working days of HPC's actual receipt of the Navy's report did not warrant reopening of the file, since HPC was required to either file its comments or advise GAO that it had not received the report within 7 working days from the December 10, 1985, due date for delivery of the Navy report to GAO and to HPC.

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HPC contends that our Bid Protest Regulations do not justify a dismissal in these circumstances and alleges that, in any event, we had HPC's comments to the agency report before we dismissed HPC's protest because it had failed to file its comments timely.

GAO's Bid Protest Regulations, 4 C.F.R. § 21.3(e), provide that the protester's failure to file comments within the 7-day period, or to file a statement requesting that the protest be decided on the existing record, or to request an extension of the period for submitting comments, will result in the dismissal of the protest. Obviously, GAO has no means of determining the precise date that a protester received the report. At the same time, the Competition in Contracting Act of 1984 (CICA) generally requires our Office to issue a final decision within 90 working days after the protest is filed. 31 U.S.C.A. § 3554 (West Supp. 1985).

In order to meet the statutory time constraints for issuing a decision, and since we have no way of knowing when a protester receives the report, we needed to establish a date for receipt of the agency report by the protester upon which we could rely, in the absence of information to the contrary. Otherwise, the protester could idly await the report for an indefinite time to the detriment of the protest system, generally, as well as our ability to resolve protests expeditiously as required by CICA. Accordingly, our acknowledgment notice, sent to HPC shortly after the protest was filed, advised HPC of the report due date of December 10, 1985, and that HPC should promptly notify our Office if it did not receive the report on that date. It further advised that unless we heard from HPC, we would assume it received a copy of the report when we received ours. This notice made clear to the protester that the 7-day comment period commenced, at the latest, on December 10, 1985, the due date listed for the report, unless we were notified that the protester had not received the report by the stated date. Del-Jen, Inc.--Reconsideration, B-218136.3, June 10, 1985, 85-1 C.P.D. ¶ 659.

Thus, HPC clearly was on notice that, if we did not hear from the firm by December 19, 1985, the protest would be dismissed. HPC contends if HPC had sent a letter to our Office on December 11, a day after the due date, stating it had not received the report timely, we would not have received it until after it received the report on December 13 and it would have been "a waste of everyone's time." However, under our procedures, HPC merely was required to

promptly notify us that it had not received the report. HPC could have satisfied this obligation by telephoning this Office. A letter was not required for this purpose.

Furthermore, while HPC claims that the notice was unclear as to when the protester should notify GAO of late delivery of the report, we think a reasonable reading of the language should have placed the protester on notice that, unless we were timely advised to the contrary, we would assume that the protester received a copy of the report on the date we received it and that the 7-day period for filing comments began on that date. Thus, HPC was required to notify us timely if our assumption was incorrect which meant within the 7-day period from the report due date.

Finally, HPC asserts that HPC's comments were filed before the protest was dismissed. This is incorrect. Our records show that HPC's comments were filed (hand delivered) on December 24, although the letter is dated December 23, 1985. Our dismissal notice was dated December 23, 1985, and thus HPC's protest was closed before our receipt of HPC's comments. The last correspondence from HPC prior to our closing of the file is a letter dated November 8, which was approximately 1 month before the agency report was filed.

We affirm the decision not to reopen the file.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel